

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A
BRAZOS LICENSING AND DEVELOPMENT,
Plaintiff,
v.
HEWLETT PACKARD ENTERPRISE COMPANY,
Defendant.

Nos. 6:20-cv-00725-ADA
6:20-cv-00726-ADA
6:20-cv-00727-ADA
6:20-cv-00728-ADA
6:20-cv-00729-ADA
6:20-cv-00730-ADA
6:20-cv-00783-ADA

BRAZOS'S NOTICE OF SUPPLEMENTAL AUTHORITY
RELATING TO HPE'S MOTIONS TO DISMISS

Brazos submits this Notice of Supplemental Authority in further opposition to HPE's motions to dismiss Brazos's First Amended Complaints (Case Nos. 6:20-cv-00725, Dkt. 25; 6:20-cv-00726, Dkt. 25; 6:20-cv-00727, Dkt. 25; 6:20-cv-00728, Dkt. 25; 6:20-cv-00729, Dkt. 25; 6:20-cv-00730, Dkt. 25; and 6:20-cv-00783, Dkt. 25). After the briefing on HPE's motions to dismiss was completed, this Court issued its decision in *USC IP Partnership, L.P. v. Facebook, Inc.*, Case 6:20-CV-00555-ADA, Dkt. 62 (W. D. Tex. Jul. 23, 2021). A copy of the *USC IP* decision is attached to this Notice as Exhibit A.

In *USC IP*, this Court considered, among other things, Facebook's Rule 12(b)(6) motion to dismiss indirect infringement claims for failure to allege pre-suit knowledge. Facebook contended that pre-suit knowledge is required to sustain a claim for indirect infringement, whether pre-suit or post-suit. *See* 6:20-CV-00555-ADA, Dkt. 9 at 1, 6-7. This Court disagreed. Although the plaintiff did not allege pre-suit knowledge, the Court granted Facebook's motion to dismiss only as the *pre-suit* portion of the indirect infringement claims, giving USC permission to add them back in after the start of fact discovery. *Id.*, Dkt. 62 at 4-5. This Court *denied*

Facebook's motion to dismiss the post-suit indirect infringement claims, explaining: "[S]ince USC alleges that Facebook has knowledge of the asserted patent and the alleged infringement **at least at the commencement of this action**, the Court finds that USC has sufficiently alleged its post-suit indirect [] infringement claims." *Id.* at 5 (emphasis added). Thus, this Court confirmed that alleging knowledge as of the commencement of the action is sufficient to state a claim for post-suit indirect infringement.

This Court's *USC IP* decision supports denying HPE's motions to dismiss Brazos's indirect infringement claims for failure to allege pre-suit knowledge. Similar to in *USC IP*, Brazos's first amended complaints allege knowledge "[a]s of the date of service of the initial complaint[s]." *See, e.g.*, Case 6:20-cv-00735, Dkt. 22 at ¶ 53. This is sufficient to state a claim for at least post-suit indirect infringement. HPE's motion to dismiss Brazos's post-suit indirect infringement claims should be denied.

Respectfully submitted,

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